

Assembly Bill No. 381

Passed the Assembly July 3, 2013

Chief Clerk of the Assembly

Passed the Senate July 1, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 859 and 4231.5 of the Probate Code, relating to estates and trusts.

LEGISLATIVE COUNSEL’S DIGEST

AB 381, Chau. Estates and trusts: undue influence and elder abuse.

(1) Existing law provides that a person found liable for taking, concealing, or disposing of property belonging to the estate of a decedent, conservatee, minor, or trust through the use of undue influence in bad faith, or through the commission of elder or dependent adult financial abuse, is liable for twice the value of the property. Existing law provides that this remedy is additional to any other remedy available at law.

This bill would provide that a person may, in the court’s discretion, be liable for reasonable attorney’s fees and costs in these actions, except as specified. The bill would specifically apply these provisions to property belonging to an elder or a dependent adult. The bill would make technical changes with regard to the nonexclusive character of the remedy provided.

(2) Existing law provides that a person who, in bad faith, wrongfully takes, conceals, or disposes of property belonging to a principal under a power of attorney is liable for twice the value of the property recovered by an action to recover the property or for surcharge.

This bill would extend this liability to a person who has taken, concealed, or disposed of property by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse, as defined. The bill would provide that a person may, in the court’s discretion, be liable for reasonable attorney’s fees and costs under these provisions and those described above, except as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 859 of the Probate Code is amended to read:

859. If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of property belonging to a conservatee, a minor, an elder, a dependent adult, a trust, or the estate of a decedent, or has taken, concealed, or disposed of the property by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse, as defined in Section 15610.30 of the Welfare and Institutions Code, the person shall be liable for twice the value of the property recovered by an action under this part. In addition, except as otherwise required by law, including Section 15657.5 of the Welfare and Institutions Code, the person may, in the court's discretion, be liable for reasonable attorney's fees and costs. The remedies provided in this section shall be in addition to any other remedies available in law to a person authorized to bring an action pursuant to this part.

SEC. 2. Section 4231.5 of the Probate Code is amended to read:

4231.5. (a) If the attorney-in-fact breaches a duty pursuant to this division, the attorney-in-fact is chargeable with any of the following, as appropriate under the circumstances:

(1) Any loss or depreciation in value of the principal's property resulting from the breach of duty, with interest.

(2) Any profit made by the attorney-in-fact through the breach of duty, with interest.

(3) Any profit that would have accrued to the principal if the loss of profit is the result of the breach of duty.

(b) If the attorney-in-fact has acted reasonably and in good faith under the circumstances as known to the attorney-in-fact, the court, in its discretion, may excuse the attorney-in-fact in whole or in part from liability under subdivision (a) if it would be equitable to do so.

(c) If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of property that belongs to a principal under a power of attorney, or has taken, concealed, or disposed of property that belongs to a principal under a power of attorney by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse, as defined in Section 15610.30 of the Welfare and Institutions Code, the person shall be liable for twice the value of the property recovered by an action to recover the property or for surcharge. In addition, except as

otherwise required by law, including Section 15657.5 of the Welfare and Institutions Code, the person may, in the court's discretion, be liable for reasonable attorney's fees and costs to the prevailing party. The remedies provided in this section shall be in addition to any other remedies available in law to the principal or any successor in interest of the principal.

Approved _____, 2013

Governor